



November 7, 2001

Mr. J. Robert Giddings  
University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-3981

OR2001-5151

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154520.

The University of Texas System (the "system") received a request for copies of various documents related to a specified former employee of the system. You state that you have no objection to providing the requestor with documents that are responsive to items 1 and 3 of the request. You claim, however, that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.134 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the system failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body that requests an attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested. *See Gov't Code § 552.301(e)(1)(D)*. However, the system did not provide us with any information that is responsive to items 4 and 5 of the request.

When a governmental body fails to submit responsive information to us for review that it wishes to withhold from disclosure, the information at issue is presumed public. *See Gov't Code § 552.302; see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--

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<sup>1</sup> The Seventy-Seventh legislature recently renumbered section 552.131 of the Government Code as section 552.134 of the Government Code. *See Act of May 22, 2001, 77<sup>th</sup> Leg., R.S., HB 2812, § 21.001(53) (codified at Gov't Code § 552.134)*. Accordingly, we address your section 552.131 claim under section 552.134 of the Government Code.

Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is some source of law that makes the information confidential or a demonstration that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). The system claims that the information that is responsive to items 4 and 5 of the request is excepted from disclosure pursuant to section 552.134 of the Government Code. However, because the system did not submit a copy of this information, we have no basis for concluding that any of it is confidential by law. Accordingly, we conclude that the system must release the information that is responsive to items 4 and 5 of the request to the extent that it exists.

You claim that the submitted documents that are responsive to item 2 of the request are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>2</sup> Section 161.032 provides in relevant part:

The records and proceedings of a medical committee are confidential and are not subject to court subpoena . . . Records, information, or reports of a medical committee . . . are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a). A "medical committee" means "any committee . . . of (1) a hospital; (2) a medical organization; [and] (3) a university medical school or health science center." *Id.* § 161.031(a). However, the confidentiality afforded records under section 161.032 does not extend to "records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility." Health & Safety Code § 161.032(c). The phrase "documents made or maintained in the regular course of business" has been construed to refer to routine records the creation of which did not entail a "deliberative process." *See Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d at 9 (citing *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988)). In *Jordan v. Court of Appeals for Fourth Supreme Judicial District*, 701 S.W.2d 644, 648 (Tex. 1985), the court stated that records "gratuitously submitted to a committee or which have been created without committee impetus and purpose are not protected."<sup>3</sup> *See*

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<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

<sup>3</sup> *Barnes* and *Jordan* both relied upon the predecessor statute to 161.032 of the Health & Safety Code, section 3 of article 447d, Vernon's Texas Civil Statutes, which provided, in part, that "records made or maintained in the regular course of business" were not confidential.

*Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1 at 9-10 (discussing business records and holdings in *Barnes and Jordan*). Therefore, even if records are submitted to or created by a medical peer review or medical committee, the records are not generally confidential if made or maintained in the regular course of business so as to be devoid of a deliberative process. See Health & Safety Code § 161.032(c).

You state that the documents that are responsive to item 2 of the request are meeting minutes of the medical Quality Assurance Committee (the "QAC") of the University of Texas Medical Branch which meets regularly to review patient care issues regarding the treatment of inmates at the Connally Unit of the Texas Department of Criminal Justice. Based on your representations and our review of the submitted meeting minutes, we conclude that the QAC constitutes a "medical committee" under section 161.031 of the Health and Safety Code. See Health & Safety Code § 161.031(a). Furthermore, we find that the meeting minutes indicate a deliberative process and, therefore, cannot be construed as documents made in the regular course of business. See *Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d at 9-10. Accordingly, the system must withhold the submitted QAC minutes from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

In summary, the system must release the information that is responsive to items 4 and 5 of the request to the extent that it exists. The system must withhold the submitted QAC minutes from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

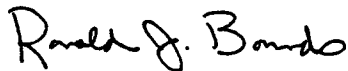
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 154520

Enc. Submitted documents

cc: Mr. Verlis Felkins  
4127 FM 673  
Beeville, Texas 78102  
(w/o enclosures)